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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,722	01/31/2002	Lars Jorneus	19390.0003	1626

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EXAMINER

LEWIS, RALPH A

ART UNIT PAPER NUMBER

3732

DATE MAILED: 07/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/936,722

Applicant(s)
Jorneus

Examiner
Ralph Lewis

Art Unit
3732



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 6 6) ☐ Other:

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Abstract Missing

This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

Objections to the Specification

The specification is objected under 37 CFR 1.77(c) for lacking the section headings for the different portions of the specification.

The references to the claims at page 3, lines 2 and 11, is not in accordance with U.S. practice. The specification is to provide a basis for the claims, not vice-versa.

Objection to the Claims

The claims are objected under 37 CFR 1.75(I) for lacking a line indentation for each element of the claimed device.

Objection to the Drawings

The specification indicates at page 9, line 17, that the holder 1 is comprised of a plastic material, yet the Figure 2 illustrates the holder in cross-section as being comprised of metal. Correction is required. See MPEP pg 600-95 for proper cross-hatching.

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Rejections based on 35 U.S.C. 112, second paragraph

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, lines 2 and 26, the “preferably” limitation is not understood. A limitation is either required or it is not. In line 3, the use of the terminology “means” is unclear, is applicant intending to invoke 35 U.S.C. 112, sixth paragraph? Conventional means plus function terminology (e.g. “means for holding”) is suggested. Additionally, the claim contains several grammatical errors and is difficult to read and understand. Applicant is requested to redraft the claim setting forth the invention in a clear and logical manner.

In claim 2, line 1, (as well as in all the dependent claims) the reference to “Patent” is unconventional.

Additionally, it is noted that the remainder of the claims contain a number of grammatical and idiomatic errors. The “preferably” terminology used throughout the claims is confusing and indefinite. Applicant’s usage of “means” terminology throughout the claim is unconventional and confusing. Applicant is requested to review the claims placing them in proper idiomatic English.

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Rejections based on Prior Art

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Niznick (5,622,500).

Niznick discloses a holder 38 for holding spacer 6 and screw 13 extending through the hole in the spacer 6 for securement to the implant 1.

Prior Art


Applicant's information disclosure statement of September 18, 2001 has been considered and an initialed copy enclosed herewith.

Leuschen et al (5,368,160), Kwan (5,564,924), Ura (5,944,525), Misch et al (6,068,480), Misch et al (6,083,004), Kumar (6,217,332 B1), Sutter (6,247,932 B1), Schmutz et al (6,261,097 B1) and Kumar et al (6,312,260 B1) are made of record.

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Any inquiry concerning this communication should be directed to Ralph Lewis at telephone number (703) 308-0770. Fax (703) 872-9302. The examiner works a compressed work schedule and is unavailable every other Friday.

R.Lewis
June 27, 2002



Ralph A. Lewis
Primary Examiner
Au3732